

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

In re)	
)	Case No. 18-05665
Curae Health, Inc., <i>et.al</i> ¹ ,)	Chapter 11
)	
1721 Midpark Road, Suite B200)	Judge Walker
Knoxville, TN 37921)	
)	Jointly Administered
Debtors.)	

<p>THE DEADLINE FOR FILING A TIMELY RESPONSE IS: November 20, 2018. IF A RESPONSE IS TIMELY FILED, THE HEARING WILL BE: November 27, 2018, 2:00 p.m., Courtroom Two, 2nd Floor, Customs House, 701 Broadway, Nashville, Tennessee 37203</p>

LIMITED OBJECTION TO PROPOSED SALE OF GILMORE MEDICAL CENTER ASSETS

Come MEDHOST of Tennessee, Inc., its wholly-owned subsidiary, MEDHOST Direct, Inc., and MEDHOST Cloud Services, Inc., formerly known as YourCareUniverse, Inc., sometimes referred to herein collectively as “MEDHOST,” pursuant to the Order approving bidding procedures and authorizing the sale of the Proposed Purchased Assets (as defined in the Gilmore APA) entered September 28, 2018 (Docket No. 260) (the “Sale Order”), and respectfully submit this limited objection to the proposed sale of the Proposed Purchased Assets. In support of this limited objection, MEDHOST respectfully represents as follows:

1. Pursuant to paragraph 17 of the Sale Order, any objection on any basis to the sale of the Proposed Purchased Assets, as defined in the Gilmore APA, as proposed in the Debtors’ Sale Motion (Docket No. 79), are to be filed by 5:00 p.m. on November 20, 2018. MEDHOST does not oppose the sale of the Proposed Purchased Assets to the approved Stalking Horse Purchaser. However, because the proposed sale of the Proposed Purchased Assets to the

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are Curae Health, Inc. (5638); Amory Regional Medical Center, Inc. (2640); Batesville Regional Medical Center, Inc. (7929); Clarksdale Regional Center, Inc. (4755); Amory Regional Physicians, LLC (5044); Batesville Regional Physicians, LLC (4952); and Clarksdale Regional Physicians, LLC (5311).

Stalking Horse cannot be closed upon the terms and conditions proposed by the Debtors and the Stalking Horse with respect to the MEDHOST Agreements (defined below), MEDHOST respectfully submits this limited objection to the sale of the Proposed Purchased Assets.

2. Under date of July 7, 2015, MEDHOST of Tennessee, Inc. entered into that certain SOFTWARE LICENSE AND APPLICATION SERVICES AGREEMENT with Curae Health, Inc. (“Curae”). Thereby, Curae obtained the rights to use at certain “Licensed Sites,” as defined therein, MEDHOST’s Enterprise software, which is the primary electronic health record software in which most core hospital operations - both financial and clinical – function. By amendment dated July 13, 2017, the Gilmore Memorial Hospital facility, owned and operated by Amory Regional Medical Center, Inc., was added as a Licensed Site to this agreement.

3. Under date of July 7, 2015, MEDHOST Direct, Inc. entered into that certain HOSTING AND MANAGED SERVICES AGREEMENT with Curae, by which among other things MEDHOST hosts Curae’s licensed Enterprise software on servers owned and operated by MEDHOST at a MEDHOST data center. By amendment dated July 13, 2017, the Gilmore Memorial Hospital facility was added as a Licensed Site under this agreement.

4. Under date of July 7, 2015, MEDHOST Cloud Services, Inc. (f/k/a YourCareUniverse, Inc.), entered into that certain MASTER PRODUCTS AND SERVICES AGREEMENT with Curae, pursuant to which Curae receives certain cloud-based and/or SaaS services, such as the operation of Curae’s patient portal.

5. Collectively, the agreements described in numbered paragraphs 2 through 4 above shall be referred to as the “MEDHOST Agreements.” The MEDHOST Agreements are executory contracts as contemplated in 11 U.S.C. § 365. All MEDHOST Agreements include MEDHOST and Debtor Curae Health, Inc. as counterparties. None of the other six (6) Debtors is a party to the MEDHOST Agreements, or any of them.

6. Pursuant to the Sale Order on October 29, 2018, the Debtors filed their NOTICE OF: (I) DEBTORS' INTENT TO ASSUME AND ASSIGN CERTAIN EXECUTORY CONTRACTS, UNEXPIRED LEASES OF PERSONAL PROPERTY, AND UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY; AND (II) CURE AMOUNT RELATED TO THE FOREGOING (the "Notice"), Docket No. 371. In response, on November 1, 2018, MEDHOST, through counsel, filed objections to the Notice insofar as it relates to the MEDHOST Agreements (Docket No. 380, hereinafter referred to as the "Objections") This objection incorporates by reference the Objections, and reasserts them as limited objections to the sale of the Proposed Purchased Assets, including without limitation objections (a) to the assumption and assignment of the MEDHOST Agreements referenced above; (b) to the cure amounts indicated by the Debtors on Exhibit 1 to the Notice; (c) to the Debtors' efforts to sever or bifurcate the MEDHOST Agreements into separate agreements per medical facility; and (d) because of the failure to provide MEDHOST with adequate assurance of future performance of all obligations under the MEDHOST Agreements. As noted above, MEDHOST does not object to the sale of the Proposed Purchased Assets to the approved Stalking Horse.

7. Exhibit 1 to the Notice comprises two tables setting forth the Debtors' listing of executory contracts to which Amory Regional Medical Center, Inc. or Curae Health, Inc. is a party, and which may be assumed and assigned if the Sale Motion (Docket No. 79) to authorize the sale of the Proposed Purchased Assets is granted and executory contracts are assigned to a qualified operator of the Gilmore Medical Center. The reader of the Sale Motion and the Notice may be left with the impression that the MEDHOST Agreements are two-party contracts between Debtor Amory Regional Medical Center, Inc. and MEDHOST. That is incorrect. There exists no contract between Debtor Amory Regional Medical Center, Inc. and MEDHOST. The MEDHOST Agreements are between MEDHOST and Curae Health, Inc. No subsidiary of

Curae Health is a party to any of the MEDHOST Agreements, though some are Licensed Sites thereunder. The MEDHOST Agreements cannot be severed without the consent of MEDHOST, and such consent has not been given. To the extent the Notice or the Sale Motion implies otherwise, it is inaccurate, and MEDHOST objects.

8. Further, the proposed cure amounts listed on Exhibit 1 for the MEDHOST Agreements are incorrect. As noted above, Debtor Amory Regional Medical Center, Inc. is not a party to the MEDHOST Agreements. In addition, the actual cure amount required to cure all defaults under the MEDHOST Agreements, pursuant to 11 U.S.C. §365(b)(1)(A), is approximately \$3,153,129.98, plus all amounts required to compensate MEDHOST, pursuant to 11 U.S.C. §365(b)(1)(B), for its actual pecuniary losses resulting from Curae Health's default under the MEDHOST Agreements (collectively, the "Cure Amount"). The MEDHOST Agreements cannot be assumed and assigned, under 11 U.S.C. § 365(b)(1), without the full Cure Amount being paid in full.

9. MEDHOST further objects to the assumption and assignment of the MEDHOST Agreements because the Debtors and the approved Stalking Horse have not complied with 11 U.S.C. § 365(b)(1)(C). The Debtors and the Stalking Horse have failed to provide MEDHOST with adequate assurance of future performance of all obligations required under the MEDHOST Agreements.

10. Separately, Debtor Amory Regional Medical Center, Inc. may be liable for some or all amounts due and owing to MEDHOST under the MEDHOST Agreements. MEDHOST respectfully reserves this issue for future determination.

11. As it was required to do by section V.(d) of the Bidding Procedures approved by the Sale Order, on November 12, 2018, the approved Stalking Horse ("NMHS") filed a notice (Docket No. 446, the "NMHS Notice") of its intent to assume certain executory contracts and

unexpired leases, including the MEDHOST Agreements. The cure amount applicable to the MEDHOST Agreements was therein stated to be \$0.00. Although not identical to the Notice filed by the Debtors on October 29, 2018, the NMHS Notice is sufficiently similar to the Debtors' Notice that it suffers from all the defects and objections of the Notice, as detailed hereinabove; hence, all of the Objections set forth in Docket No. 380 are incorporated herein by this reference, and hereby are asserted as defects in and objections to the NMHS Notice.

12. The Gilmore APA provides that any time prior to the closing of the sale, the approved Stalking Horse may change its prior decision (as set forth in the NMHS Notice) to assume, or not to assume, any executory contract or unexpired lease, including the MEDHOST Agreements. The NMHS Notice expressly reserves this option in favor of NMHS. In the event that as of the closing of the sale, the MEDHOST Agreements have not been assumed in accordance with all applicable requirements of 11 U.S.C. § 365, then, in the absence of any agreement between MEDHOST and Curae Health, Inc. to do otherwise, MEDHOST expects to discontinue services to the Gilmore Medical Center and provide the purchaser with a tape of all records of the Gilmore Medical Center in the system's native file format.

WHEREFORE, MEDHOST does not oppose the sale of the Proposed Purchased Assets to the approved Stalking Horse. However, MEDHOST objects to the assumption and assignment of the MEDHOST Agreements for the reasons set forth above. MEDHOST further objects to the proposed Cure Amounts listed on Exhibit 1 to the Notice, and in Exhibit A to the NMHS Notice. If the successful purchaser of the Proposed Purchased Assets desires to take advantage of the benefits of the MEDHOST Agreements, and conditions the closing upon the assumption and assignment thereof, the sale cannot be approved unless and until all requirements of 11 U.S.C. § 365 have been fully satisfied, including payment in full of the Cure Amount, and a full curing of the Debtors' and the Stalking Horse's failure to demonstrate adequate assurance

of future performance of the MEDHOST Agreements. MEDHOST does not oppose the sale of the Proposed Purchased Assets to the approved Stalking Horse, but such cannot be approved and consummated, and the MEDHOST Agreements cannot be assumed and assigned, under these circumstances.

Respectfully submitted this the 19th day of November, 2018.

/s/ G. Rhea Bucy
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CERTIFICATE OF SERVICE

I hereby certify that on November 19, 2018, a true and correct copy of the foregoing document was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's electronic filing system.

/s/ G. Rhea Bucy

G. Rhea Bucy